IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2015

CORAM

**THE HONOURABLE MR. JUSTICE S.NAGAMUTHU**

Second Appeal No.1038 of 2007 and
M.P.No.1 of 2015

Palaniammal ... Appellant

Vs.

1.Pichayammal

Mariammal (died)
2.Muthu Mariammal
3.A.Natarajan
4.A.Soundararajan
5.A.Bala Mohanraj
6.A.Maayandi
7.A.Venkat @ Balakrishnan
8.Viswanathan Chettiar
9.Mani Chettiar
10.Venkatesan Chettiar
11.Ramesh Chettiar ... Respondents

**Prayer:-** This second appeal has been filed under Section 100 C.P.C., against the judgment and decree dated 27.07.2015 made in A.S.No.34 of 2013 on the file of the learned IV Additional District and Sessions Judge, Coimbatore confirming the judgment and decree dated 19.11.2012 made in O.S.No.266 of 2005 on the file of the learned II Additional Subordinate Judge, Coimbatore.

For Appellant : Mr.N.Manokaran

**JUDGEMENT**

The first defendant in O.S.No.266 of 2005 on the file of the learned II Additional Subordinate Judge, Coimbatore is the appellant herein. The first respondent in this second appeal is the plaintiff in the suit and the other respondents herein are the other defendants in the suit. The first respondent filed the said suit for partition and for allotment of her 1/4$^{th}$ share in the suit property. The trial Court by decree and judgment dated 19.11.2012, decreed the suit as prayed for. As against the same, the appellant herein filed an appeal in A.S.No.34 of 2013. The learned IV Additional District and Sessions Judge, Coimbatore by decree and judgment dated 27.07.2015 dismissed the said appeal thereby confirming the decree and judgment of the trial Court. As against the same, the appellant is before this Court with this second appeal.

2.This second appeal has come up today for admission. I have heard the learned counsel for the appellant and I have also perused the records carefully.

3.The case of the plaintiff in brief is as follows:-

The plaintiff and the defendants 1 to 3 are the co-sisters. Their respective husbands were brothers and they all were living in a joint

family. From out of the earnings of the plaintiff and the defendants 1 to 3, the suit property was purchased under Ex.A.1 on 29.10.1984. Thus, in the suit property, the plaintiff and the defendants 1 to 3 have got equal share. The first defendant claims that the suit property absolutely belongs to her, which, according to the plaintiff, necessitated to file the present suit for partition.

4.The first defendant in her written statement took a plea that though, it is true that Ex.A.1, the sale deed stands in the name of the plaintiff and the defendants 1 to 3 jointly, the plaintiff and the defendants 2 and 3 have got no right, title, whatsoever over the suit property. According to the first defendant/appellant herein, the entire sale consideration was paid only by her husband Late Mr.B.Ayyanar for the purchase of the suit property. Thus, the suit property absolutely belongs to the appellant/first defendant herein. He has further pleaded that the suit property has not been described properly.

5.Based on the above pleadings, appropriate issues were framed by the trial Court. On the side of the plaintiff, she was examined as P.W.1 and as many as five documents were exhibited. Ex.A.1 is the sale deed dated 29.10.1984; Ex.A.2 is the legal notice; Exs.A.3 & A.4 are the postal acknowledgment cards and Ex.A.5 is the postal cover which was returned unserved. On the side of the defendants neither oral evidence nor documentary evidence was let in.

6.Having considered all the above, the trial Court decreed the suit thereby granting preliminary decree allotting 1/4th share to the plaintiff and the same was confirmed by the First Appellate Court. Therefore, the appellant/first defendant is before this Court with this second appeal.

7.The learned counsel for the appellant would submit that the Courts below have not appreciated the oral evidence of P.W.1 wherein, she has not proved that she also contributed for the purchase of the suit property under Ex.A.1. The learned counsel would further submit that there is enough evidence to show that the plaintiff was ousted from possession.

8.I have considered the above submissions.

9.At the outset I should say that there is no substantial question of law at all involved in this second appeal warranting admission of the same. On facts also, I do not find any perversity in the judgments of the Courts below. As rightly held by the First Appellate Court, the plea of ouster is a matter to be pleaded and proved. Here, in this case, there is no specific plea of ouster and there is no evidence at all let in by the appellant/first defendant to prove the same. Similarly, though, it is pleaded by the appellant/first defendant that the entire

contribution for the purchase of the suit property under Ex.A.1 was made only by her husband, absolutely, there is no evidence for the same. Further, as against the contents of Ex.A.1, no evidence can be let in as there is bar under Section 92 of the Indian Evidence Act. There is no plea of benami also. At any rate, the appellant has not let in either oral or documentary evidence to prove that she has got absolute title for the suit property and therefore, the plaintiff is not entitled for 1/4$^{th}$ share. The Courts below have appreciated all these facts thoroughly and have come to the conclusion that as per Ex.A.1, the plaintiff and the defendants 1 to 3 are entitled for 1/4$^{th}$ share each. In this finding, I do not find any infirmity warranting interference. As I have already pointed out, there is on substantial question of law at all involved in this second appeal. In view of the above, this second appeal deserves to be dismissed.

10.In the result, the second appeal fails and accordingly, the same is dismissed and the decree and judgment of the First Appellate Court is confirmed. There shall be no order as to cost. Consequently, connected miscellaneous petition is closed.

**10.12.2015**

jbm

Index: Yes/No

To

1.The IV Additional District and
Sessions Judge,
Coimbatore.

2.The II Additional Subordinate Judge,
Coimbatore.

**S.NAGAMUTHU,J.**

Jbm

**Second Appeal No.1038 of 2015**

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